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7 IN THE UNITED STATES DISTRICT COURT
8 DISTRICT OF ARIZONA

9 United States of America,

10 Plaintiff,

11 v.

12 Manuel Humberto Ozuna Munoz,

13 Defendant.

Case No. 2:17-cr-1078-DGC

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**MOTION TO
SUPPRESS IDENTITY UNDER THE
FIFTH AMENDMENT OF THE U.S.
CONSTITUTION**

(Evidentiary Hearing Requested)

Excludable delay under 18 U.S.C. § 3161(h)(1)(D) may result from this motion or from an order based therein.

Defendant, Mr. Manuel Humberto Ozuna Munoz, by and through counsel undersigned, and under Federal Rule of Criminal Procedure, Rule 12(b)(3)(C), moves this Court to enter an Order suppressing his identity and statements as a product of an incriminating statement under the Fifth Amendment of the U.S. Constitution. U.S. Const. Amend. V.

This request is supported by the following Memorandum of Points and Authorities. Mr. Munoz also respectfully request the right to supplement his motion should additional evidence not presently disclosed by the Government become known to him.

1 RESPECTFULLY SUBMITTED: September 17, 2017.
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s/Juan L. Rocha
JUAN L. ROCHA
Attorney for Defendant

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1 **I. FACTUAL BACKGROUND**

2 On June 14, 2017, the Immigration and Customs Enforcement (ICE) Phoenix Mobile
 3 Criminal Alien Team Unit, received information that Mr. Munoz had checked into the Motel 6
 4 on 52nd Drive in Phoenix. They were tipped off by employees at Motel 6 that he had checked
 5 into the hotel after he had used a Mexican driver license to check into the motel. Mr. Munoz did
 6 not have any outstanding warrants nor was he committing a federal, local, or state crime, or
 7 under suspicion of having committed such a crime. By all accounts he was targeted for having
 8 a Spanish surname and using a foreign identification—a proxy for alienage.¹
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10 Knowing he had checked into room #214, two ICE agents knocked on the door. Mr.
 11 Munoz peeked through the window and saw the ICE agents dressed in civilian clothes. They
 12 waived for him to open the door. He did and the agents walked into room #214, without a
 13 warrant and without his consent. They immediately asked him his name and he told them. The
 14 agents then followed up by asking him if there was anyone else in the room, to put on this
 15 clothes, and handcuffed him. In less than five minutes the agents escorted him out of the room
 16 and into their squad car. He was transported to the ICE field office and fingerprinted confirming
 17 his criminal and immigration history. Based on this information, the U.S. Attorney's Office later
 18 filed a criminal complaint alleging he violated 8 U.S.C. § 1326(a), Illegal Reentry of Removed
 19 Alien.

20 **II. ISSUE PRESENTED**

21 Mr. Munoz contends his identity can be suppressed under the Fifth Amendment because
 22 the Border Patrol agent failed to advise him of his *Miranda* rights despite being in custody and
 23 interrogated. His statements should also be suppressed under *Miranda*.
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26 ¹ There were several other defendants arrested under similar circumstances and at the
 27 same Motel 6. The criminal complaints in those cases have verbatim language and charge the
 28 defendants with the same offense. See *U.S. v. Felix-Aguilar*, CR 17-6239-mj; *U.S. v. Flores-*
Aviles, CR17-6140-mj; *U.S. v. Flores-Hernandez*, CR17-6220-mj; *U.S. v. Renteria-Alvarado*,
CR17-8221-mj. There are several others undersigned counsel does not include in this motion but
 could provide if the court requests that additional information.

1 **III. LAW AND ARGUMENT**

2 **A. Mr. Munoz's Identity Can Be Suppressed Under the Fifth Amendment
3 Because Furnishing His Name to Authorities Directly Linked Him To
4 The Offense.**

5 Though the Supreme Court has established that a criminal defendant cannot suppress his
6 identity—even when there has been some prior illegality on the part of the government under the
7 Fourth Amendment—the Supreme Court has acknowledged that identity may be suppressed under
8 the Fifth Amendment.²

9 In *Hiibel v. Sixth Judicial District*,³ the Supreme Court suggested that the Fifth
10 Amendment may furnish the right to suppress identity “where there is a substantial allegation
11 that furnishing identity at the time of the stop would have given the police a link in the chain of
12 evidence needed to convict the individual of a crime.”⁴

13 In *Hiibel*, the State charged and convicted the defendant of a statute called the “stop and
14 identify” law. Asking the Supreme Court to suppress his identity, the defendant raised both a
15 Fourth Amendment and Fifth Amendment argument; regarding the former, the Court reaffirmed
16 its general rule that identity cannot be suppressed under the Fourth Amendment and thus
17 rejected defendant’s argument. Regarding the latter argument, however, the Court conceded his
18 argument had traction. According to Justice Kennedy, the Fifth Amendment’s privilege against
19 self-incrimination “protects against any disclosures that the witness reasonably believes could
20 be used in a criminal prosecution or could lead to other evidence that might so be used.”⁵ For
21 identity to be suppressed under the Fifth Amendment, in other words, a defendant must show
22 there is a link between identity and the evidence needed to prosecute him. The Court concluded
23 that the defendant had failed to show a link between his identity and the crime. It explained: “in

25 ² *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984).

26 ³ *Hiibel v. Sixth Judicial District*, 542 U.S. 177 (2004)

27 ⁴ *Id.* at 190.

28 ⁵ *Id.*

1 this case disclosure of [defendant's] name presented no reasonable danger of incrimination.”⁶
 2 The Court left open the possibility that “a case may arise where there is a substantial allegation
 3 that furnishing identity at the time of a stop would have given the police a link to the chain of
 4 evidence needed to convict the individual of a separate offense.”⁷

5 In this case, furnishing his identity at the time the ICE agents asked him about his name
 6 gave ICE agents the link to the chain of evidence needed to charge Mr. Munoz of a illegal entry
 7 of removed alien. After checking in the motel using a foreign identification card that had his
 8 name and picture, led Motel 6 employees to give his name to ICE agents, who then investigated
 9 his identity by walking to his motel room and entering it without his consent, the first thing
 10 agents asked him was his name. Disclosing his name to them directly linked him to the offense;
 11 it was a fact that led federal agents to determine he had no legal status in the United States.
 12 Furnishing his name ICE agents were able to take his fingerprints and conduct a records check
 13 that lead information revealing he was not a United States citizen. Without his identity officers
 14 would not have been able secure an arrest, let alone a criminal charge, especially since he was
 15 committing no other offense. By disclosing his identity he effectively incriminated himself.
 16 That information is now being used to prosecute him. In *Hiibel*, the Court explained that "the
 17 Fifth Amendment privilege against compulsory self-incrimination protects against any
 18 disclosures that the witness reasonably believes could be used in a criminal prosecution or could
 19 lead to other evidence that might be so used."

20 Because it was more than reasonable that Mr. Munoz’s identity could be used (and is
 21 being used) in this criminal prosecution when the agents interrogated him inside his Motel 6
 22 room, he effectively incriminated himself; as such, his identity should be suppressed under the
 23 Fifth Amendment .
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 27 ⁶ *Id.* at 191.
 28 ⁷ *Id.*

1 **B. Mr. Munoz's Statements Should Also Be Suppressed Because He Was
2 In Custody and Interrogated By ICE Agents.**

3 Before interrogating an in-custody suspect, police officers must first advise him of his
4 *Miranda* rights.⁸ For *Miranda* warnings to apply, a suspect must be in 1) custody and 2) be
5 interrogated by police.⁹ Federal courts define custody as the deprivation of “freedom of action
6 in any significant way.”¹⁰ Interrogation is defined as questions that are “reasonably likely to
7 elicit an incriminating response from the suspect.”¹¹ The Ninth Circuit has determined that
8 “Civil as well as criminal interrogation of in-custody defendants by INS investigators should
9 generally be accompanied by *Miranda* warnings.”¹²

10 1. Custody

11 Mr. Munoz was in police custody. ICE agents conducted their investigation inside his
12 motel room; there was no where else for him to go. There were two agents visibly wearing their
13 ICE badges, there was one entrance to the small room, which they blocked, and placed him in
14 handcuffs. In short, he was not free to leave.

15 2. Interrogation

16 Questions about his name, alienage, and prior immigration history were clearly intended
17 to provoke incriminating responses. That he was not yet under criminal investigation is of no
18 moment because a civil administrative investigation does not render *Miranda* warnings
19 inapplicable.¹³ Agents had reason to know that any admission of his identity and alienage would
20 be highly incriminating. When the agent encountered him inside his hotel room they were acting

23 ⁸*Dickerson v. United States*, 530 U.S. 428 (2000)

24 ⁹*Miranda v. Arizona*, 384 U.S. 436 (1966)

25 ¹⁰*Id.* at 479.

26 ¹¹*United States v. Booth*, 669 F.2d. 1277, 1278-79 (9th Cir. 1983)

27 ¹²*United States v. Mata-Abundiz*, 717 F.2d 1277, 1279 (9th Cir. 1983)

28 ¹³*Id.* at 1279.

1 on information that Motel 6 had produced to them based on his foreign identification. The
 2 agent questioned Mr. Munoz about name, his alienage, his presence in the United States, and
 3 how entered the United States – all these questions are the elements contained in § 1326(a). But
 4 ICE agents never advised him of his *Miranda* rights. Whatever the case, it is clear that the agent
 5 never informed Mr. Huerta that his questioning of him was merely administrative. And even if
 6 he did, given the nature of the criminal offense, the Supreme Court has held that any, not
 7 criminal. Even if had, that alone would not have been enough to cure any *Miranda* infirmity.
 8 An “investigator cannot control the constitutional question by placing a ‘civil’ label on the
 9 investigation.”¹⁴ As the Ninth Circuit has determined, if “civil investigations by the INS [now
 10 ICE] were excluded from the *Miranda* rule, INS agents could evade that rule by labeling all
 11 investigations as civil.”¹⁵ Simply put, the agent knew his questions were likely to produce
 12 incriminating answers.¹⁶

14 IV. CONCLUSION

15 For the aforementioned reasons, Mr. Munoz moves this Court to suppress evidence,
 16 namely, his identity, and suppress his statements, as a result of a *Miranda* violation, under the
 17 Fifth Amendment of the U.S. Constitution.

18 RESPECTFULLY SUBMITTED: September 17, 2017

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 20 *s/Juan L. Rocha*
 21 **JUAN L. ROCHA**
 22 Attorney for Defendant

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 25 ¹⁴ *Mata-Abundiz*, 171 F.2d at 1280.

26 ¹⁵ *Id.* at 1279.

27 ¹⁶ *Id.*, at 1280 (“The relationship of the question asked to the crime suspected is highly
 28 relevant” to whether the “elicitation of the information regarding immigration status is reasonably
 likely to inculpate the [defendant]”).

1 *I hereby certify that on September 17, 2014, I electronically transmitted the attached Motion
2 to Suppress Evidence and Statements to the Clerk's Office using the CM/ECF System for
filing and transmittal of a Notice of Electronic filing to the following CM/ECF registrant*

3 Sheila Phillips
4 Assistant United States Attorney

5 Copy Mailed to:

6 Mr. Munoz
7 Defendant

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